IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16191 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALUBHAI MAGANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16191 of 2003

MR.JRUGESH N JOSHI for Petitioner No. 1

MR M R MENGDEY AGP for Respondent No. 1-2

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/10/2004

ORAL JUDGEMENT

1. RULE. Mr.M R Mengdey learned AGP waives service

of rule on behalf of the respondents.

2. The petitioner herein has preferred this petition in order to quash and set aside the order dated 12/05/2003, at Annexure `F' to the petition and also the order dated 29/08/2003, at Annexure `G' to the petition, whereby, the appeal preferred by the petitioner was rejected on the ground of 52 days delay in filing the appeal.

3. I have heard learned counsel for the parties. On perusal of the documents on record, I am of the opinion that the Appellate Authority ought to have condoned the delay and considered the matter on merits.

4. Looking to the facts and circumstances of the case, the order of the Appellate Authority is quashed and set aside. The Appellate Authority is directed to hear the appeal of the petitioner on merits. It is made clear that this Court has not considered the matter on merits and it has entertained the matter only because of the fact that the Appellate Authority had not considered the matter on merits and had rejected the appeal on technical grounds i.e. on the ground of delay. With the above observations, the petition is partly allowed. Rule is made absolute to the aforesaid extent.

(K. S. Jhaveri, J.)

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